

REMARKS

Status

Claims 1-20 were originally filed. In response to a restriction requirement Applicant, by a document filed on July 8, 2005, elected claims 1-5, 7 and 9-18 for prosecution on the merits. The present amendment cancels claims 6-9, 16 and 19-20. It also adds new claim 21. Accordingly, it is now claims 1-5, 10-15, 17, 18 and 21 which are at issue.

The Office Action

In the Office Action mailed August 23, 2005, claims 1-5, 9-15 and 17-18, all claims then at issue, were rejected. Claims 1-5 and 9-10 were rejected under 35 U.S.C. §103 as being anticipated by U.S. Patent 6,903,136 of Miller. Claims 1-5, 9-15 and 17-18 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent 6,172,114 of McCabe and U.S. Patent 6,051,236 of Portman taken in view of Internet website www.dcdotor.com.

In addition, claims 1-5 and 9-14 were rejected under 35 U.S.C. §112 on the grounds that the term "derivative" is indefinite.

Applicant thanks the Examiner for the search, the Office Action, and the thorough explanation of the basis of the rejections.

The Present Invention

The present invention, as now set forth in the claims, is directed to a dietary supplement which includes a first material which is cinnamon, an extract of cinnamon, or a derivative thereof, together with a second material which is creatine, or a derivative or precursor thereof. The material may optionally include at least one carbohydrate. As detailed in the specification, the composition of the present invention operates to increase the uptake of creatine into skeletal muscle.

The Rejection under 35 U.S.C. §102

Claims 1-5 and 9-10 were rejected under 35 U.S.C. §102(e) as being anticipated by the disclosure of U.S. Patent 6,903,136 of Miller. It is the Examiner's stated position that the '136 patent shows compositions which include creatine monohydrate together with a cinnamon extract and a carbohydrate. On this basis, the Examiner has held that the '136 patent anticipates the then-pending claims of the present application.

The '136 patent is directed to dietary supplements based on a composition of 4-hydroxyisoleucine together with creatine. The specification of the '136 patent further states that additional ingredients, which may include cinnamon, cinnamon extracts, and carbohydrates, among others, may be incorporated into the 4-hydroxyisoleucine/creatine composition. As such, the '136 patent does show compositions which include cinnamon or its extracts and creatine; however, in all instances these compositions include 4-hydroxyisoleucine which comprises the major portion of the composition on a weight basis.

By the present amendment, claim 1 has been rewritten in partially closed "consisting essentially of" form, and recites a composition which includes cinnamon or its extracts and derivatives; creatine or its derivatives or precursors; and optionally a carbohydrate. As such, this claim excludes the 4-hydroxyisoleucine active ingredient of the '136 patent. Accordingly, claim 1 and claims 2-5, 10-15, 17 and 18 dependent thereupon are all allowable thereover.

The Rejection under 35 U.S.C. §103

Claims 1-5, 9-15 and 17-18 were rejected under 35 U.S.C. §103 over U.S. Patent 6,172,114 of McCabe and U.S. Patent 6,051,236 of Portman taken in view of the Internet website www.dcdotor.com. The '114 patent was cited for its teaching of the use of creatine and a carbohydrate in a muscle building nutritional supplement. The '236 patent was cited for its

teaching of a nutritional drink containing a carbohydrate, dextrose as an energy source, and cinnamon as a flavor. The Internet website was cited for its teaching that cinnamon has been found to aid in the metabolism of blood sugar thereby making it easier to control weight. On the basis of these references, the Examiner is of the opinion that the claimed subject matter is obvious.

This rejection fails on two separate grounds. First of all, the rejection is procedurally improper. The cited website is not prior art. The printout provided by the Examiner bears a date of August 15, 2005, and nothing within the cited pages of the website evidences that the information presented therein was publicly available at any time prior to the filing of the present application. As such, the cited website is not statutory prior art and the rejection is improper.

Even if, for the sake of argument, the website were properly citable as prior art, the Examiner's proposed combination will not make obvious the present invention. As detailed in the specification, and as is briefly discussed above, the present invention is based upon the finding that cinnamon, or cinnamon-derived materials, enhance the transport and uptake of creatine in the body. On this basis, the present invention provides and utilizes compositions which include cinnamon-based materials and creatine. The prior art cited in this rejection does not show any composition which includes these two materials. Furthermore, the prior art does not recognize that cinnamon-based materials can enhance creatine uptake; for these reasons, the prior art cannot in any way suggest the combination of cinnamon-based materials and creatine in a single supplement.

The '114 patent shows compositions of creatine and a carbohydrate. Prior use of creatine as a nutritional supplement is well known in the art, and is specifically acknowledged in the

present application. However, the '114 patent in no way suggests that creatine transport and uptake could be enhanced by the inclusion of cinnamon-based materials in the composition.

The '236 patent cannot provide any further teaching to supplement the '114 patent and make obvious the present invention. The '236 patent is directed to a nutritional sports drink which includes carbohydrates, amino acids, and flavoring agents which may comprise cinnamon. The '236 patent does not include any creatine in its compositions. Furthermore, it does not recognize that cinnamon can have any physiological activity. Cinnamon is only included in the compositions in the '236 patent as a flavoring agent, and as such is only mentioned in combination with a large listing of other flavoring agents such as banana, cherry, cranberry, grape, honeydew, kiwi, lemon, lime, orange, peach, and peppermint, among others.

The dcddoctor.com website is also deficient in providing any teaching suggesting the presently claimed composition. The website does disclose that cinnamon has physiological activities related to sugar metabolism. However, the website does not discuss any utility of cinnamon as an agent for fostering the transport and uptake of creatine. In fact, the website does not at all mention creatine.

In summary, the prior art does show one composition which includes creatine and another composition which includes cinnamon and carbohydrates. The prior art does not show any single composition which includes all of these materials. There is no teaching in the prior art which would suggest the combination of creatine and cinnamon-derived materials in a single composition. The prior art does not recognize the unique interaction of cinnamon-derived materials and creatine, which is the basis of the present invention, and as such provides no motivation to one of skill in the art which would lead to the present composition. As such, the

cited art, assuming that the website was properly citable, which it is not, does not make obvious the compositions of the present invention.

In view of these remarks, reconsideration and withdrawal of the rejection under 35 U.S.C. §103 is respectfully requested.

The Rejection under 35 U.S.C. §112

Claims 1-3 and 13-14 were objected to on the grounds that the term “derivative” as used therein is indefinite. It is the Examiner’s position that it is not clear as to what is encompassed by this term, and clarification was requested.

Applicant respectfully submits that the term “derivative” is well known in the chemical, pharmaceutical and nutraceutical arts. A derivative is a molecular species which may comprise a salt, ester, hydrate, dimer or other such conjugate of an active material. The present specification at page 8 in the first paragraph lists some specific derivatives of creatine and these include creatine monohydrate, other hydrates, salts such as a citrate, esters, phosphorylated creatine and creatine pyruvate. Analogous derivatives of cinnamon are also contemplated in the present invention. Applicant notes for the record that the cited 6,903,136 patent has claims which refer to derivatives of both 4-hydroxyisoleucine and derivatives of creatine. In view of the foregoing, Applicant respectfully submits that the term “derivative” is clear and unambiguous to those of skill in the art. Reconsideration and withdrawal of this rejection is respectfully requested.

The New Claim

Applicant presents herewith new claim 21. This claim is allowable over all of the cited prior art of record. Claim 21 basically tracks original claim 1 as filed, and further includes the limitations of original claim 11 detailing the compositional ranges of the cinnamon-based and creatine-based components of the composition. As such, the scope of claim 21 is identical to the

scope of original claim 11, which claim was not rejected over the '136 patent. Accordingly, new claim 21 is patentable over the '136 patent.

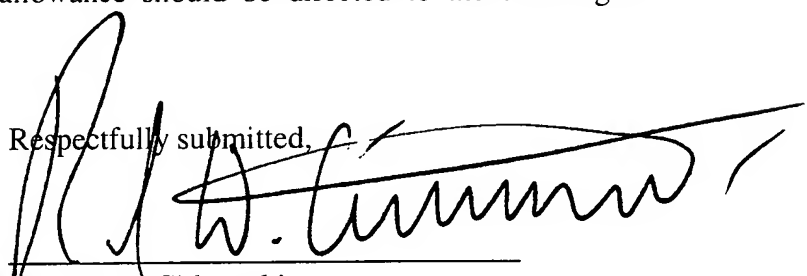
As discussed above with regard to original claim 11 and the rejection based upon 35 U.S.C. §103, new claim 21 is patentable over the combination of the '114 and '236 patents in view of the dcdctor website.

Conclusion

In view of the amendments and remarks presented hereinabove, Applicant respectfully submits that all pending claims are now in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested.

Any questions, comments or suggestions which the Examiner may have which will place the application in still better condition for allowance should be directed to the undersigned attorney.

Respectfully submitted,



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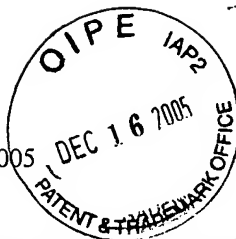
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